

**DEC 16 2005**

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U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

In re: RICHARD ISSAC FINE,

Debtor,

RICHARD ISAAC FINE,

Appellant,

v.

ROBERT P. GOE; et al.,

Appellees.

No. 05-55213

BAP No. CC-03-01497-PBMo

MEMORANDUM<sup>\*</sup>

Appeal from the Ninth Circuit  
Bankruptcy Appellate Panel  
Perris, Brandt, and Montali, Bankruptcy Judges, Presiding

Submitted December 5, 2005<sup>\*\*</sup>

Before: GOODWIN, W. FLETCHER, and FISHER, Circuit Judges.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

California attorney Richard Isaac Fine appeals pro se the Bankruptcy Appellate Panel's ("BAP") decision affirming the bankruptcy court's order dismissing Fine's adversary complaint. We have jurisdiction under 28 U.S.C. § 158(d). We review de novo dismissals for failure to state a claim. *Zimmer v. PSB Corp. (In re Zimmer)*, 313 F.3d 1220, 1222 (9th Cir. 2002) (acknowledging Fed. R. Bankr. P. 7012(b) makes Fed. R. Civ. P. 12(b)(6) applicable to adversary proceedings in bankruptcy court). We independently review the bankruptcy court's conclusions of law de novo and its factual findings for clear error. *Staffer v. Predovich (In re Staffer)*, 306 F.3d 967, 971 (9th Cir. 2002). We affirm.

Fine appears to contend that the bankruptcy court erred in dismissing his claim of unconscionability in the original promissory note because that claim survived the settlement agreement Fine signed with defendants. The bankruptcy court properly concluded that the settlement agreement barred exactly this type of claim.

The bankruptcy court dismissed Fine's cause of action for abuse of process, because Fine failed to allege defendants served summonses on him for a purpose other than pursuing their unlawful detainer actions. *See Abraham v. Lancaster Comty. Hosp.*, 217 Cal. App. 3d 796, 826 (Cal. Ct. App. 1990).

Fine's remaining contentions lack merit.

Fine's motion for leave to file a late reply brief is granted. The clerk shall file the brief received on June 28, 2005.

Fine's motions for judicial notice are denied.

**AFFIRMED.**